

PACIFIC TRIAL ATTORNEYS
A Professional Corporation
Scott J. Ferrell, Bar No. 202091
sferrell@pacifictrialattorneys.com
4100 Newport Place Drive, Suite 800
Newport Beach, CA 92660
Telephone: (949)706-6464

Attorney for Plaintiff

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

CHERYL THURSTON, an individual,

Plaintiff,

V.

CLEARPATH LENDING, INC., a California corporation; and DOES 1-10, inclusive,

Defendants.

| Case No. 8:18-cv-02094-JVS-JDE

**NOTICE OF MOTION AND MOTION
TO REMAND ACTION TO THE
SUPERIOR COURT OF
CALIFORNIA FOR THE COUNTY
OF ORANGE; MEMORANDUM OF
POINTS AND AUTHORITIES;
REQUEST FOR ATTORNEYS' FEES**

[Concurrently filed with the supporting Declaration of Scott J. Ferrell; Request for Judicial Notice; and [Proposed] Order]

Date: January 28, 2019
Time: 1:30 p.m.
Ctrm: 10C

Complaint filed: October 24, 2018
Removal Filed: November 26, 2018

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1 **TO ALL PARTIES AND THEIR COUNSEL OF RECORD:**

2 PLEASE TAKE NOTICE that on January 28, 2019, at 1:30 p.m., or as soon
3 thereafter as counsel may be heard in Courtroom 10C of the United States District Court
4 for the Central District of California located at 411 W. 4th Street, Santa Ana, California
5 92701, the Honorable James V. Selna presiding, Plaintiff Cheryl Thurston (“Plaintiff”)
6 will and hereby does move to remand this action to the Superior Court of California for
7 the County of Orange.

8 Plaintiff moves to remand on the grounds that the action does not arise under the
9 laws of the United States, there is no diversity jurisdiction, and the action is not otherwise
10 within the removal jurisdiction of this Court. 28 U.S.C. §§ 1331, 1338, 1441(a). Plaintiff
11 also seeks payment of her attorney fees in the amount of \$6,125, incurred as a result of
12 the improper removal pursuant to 28 U.S.C. § 1447(c).

13 This motion is made pursuant to 28 U.S.C. § 1447(c). This motion is based upon
14 this Notice of Motion and Motion, the accompanying Memorandum of Points and
15 Authorities, the concurrently filed supporting declaration of Scott J. Ferrell, the pleadings
16 and papers on file in this action, and upon such further evidence and argument as may be
17 presented before or at the time of hearing.

18 This motion is made following the conference of counsel pursuant to Local Rule
19 7-3 which took place on November 27, 2018, December 4, 2018, and December 5, 2018
20 by and between Scott J. Ferrell of Pacific Trial Attorneys, counsel for Plaintiff, and
21 Joseph L. Robbins and Witt W. Chang of Venable LLP, counsel for Defendant Clearpath
22 Lending, Inc.

23
24 Dated: December 19, 2018

PACIFIC TRIAL ATTORNEYS
A Professional Corporation

25
26 By: /s/ Scott J. Ferrell
27 Scott J. Ferrell
28 Attorney for Plaintiff

MEMORANDUM OF POINTS & AUTHORITIES

I. INTRODUCTION

Plaintiff Cheryl Thurston (“Plaintiff”) filed this action in the Superior Court of California for the County of Orange alleging one cause of action against Defendant Clearpath Lending, Inc. (“Defendant”) arising under California’s Unruh Civil Rights Act (“Unruh Act”), California Civil Code § 51 *et seq.* (Dkt. No. 1-1). Therein Plaintiff sought statutory damages and injunctive relief exclusively pursuant to the Unruh Act, while simultaneously acknowledging that Defendant’s offending conduct likewise constitutes a violation of the Americans With Disabilities Act of 1990 (“ADA”). Cal. Civ. Code § 51(f) (“A violation of the right of any individual under the federal Americans with Disabilities Act of 1990 (P.L. 101-336) shall also constitute a violation of this section”). However, Plaintiff did not allege a cause of action pursuant to the ADA, nor did she seek any relief pursuant thereto.

14 Despite Plaintiff's cause of action and prayer for relief sounding solely in
15 California law, Defendant still removed this action contending that, because Plaintiff
16 acknowledges that a violation of the ADA is likewise a violation of the Unruh Act, and
17 because Plaintiff seeks injunctive relief, this Court maintains original jurisdiction.
18 However, in doing so Defendant wholly and erroneously ignores binding case law from
19 the Ninth Circuit holding Defendant's removal is improper. *Wander v. Kaus*, 304 F.3d
20 856, 857 (9th Cir. 2002) (holding “**there is no federal-question jurisdiction over a**
21 **lawsuit for damages brought under [a California statute], even though the**
22 **California statute makes a violation of the federal Americans with Disabilities Act a**
23 **violation of state law. Congress intended that there be no federal cause of action for**
24 **damages for a violation of Title III of the ADA.**”) (emphasis added). Instead,
25 Defendant relies solely upon non-binding district court opinions in an effort to get around
26 binding precedent. (Dkt. No. 1 at ¶¶ 7-19).

27 As such, and for the reasons further discussed herein, Defendant improperly
28 removed this action. This matter should be properly remanded to the Superior Court of

1 California and attorney's fees in the amount of \$6,125 awarded against Defendant and to
 2 Plaintiff because removal was not objectively reasonable. 28 U.S.C. § 1447(c).

3 **II. FACTUAL BACKGROUND**

4 Plaintiff filed her complaint in this action on October 24, 2018 in the Superior
 5 Court of California for the County of Orange alleging only one cause of action against
 6 Defendant for its violation of the Unruh Act based on Defendant's failure to maintain its
 7 website, www.clearpathlending.com, in a fully and equally accessible manner for visually
 8 impaired individuals like Plaintiff. Specifically, Plaintiff alleged that because of the
 9 numerous accessibility barriers on Defendant's website, including but not limited to
 10 empty and redundant links, and empty or missing form labels, Plaintiff has been and
 11 continues to be prevented from fully and equally accessing and using Defendant's
 12 website.

13 Plaintiff did not include any federal causes of action; specifically, Plaintiff did not
 14 allege a cause of action based on Defendant's violations of the ADA, 42 U.S.C. § 12101
 15 *et seq.* Instead, Plaintiff alleged that Defendant violated section 51 of California's Civil
 16 Code based on its failure to provide equal access for people with disabilities to the
 17 accommodations, advantages, privileges, and services of its business establishment,
 18 www.clearpathlending.com. Plaintiff likewise acknowledged that "Section 51(f) of the
 19 California Civil Code provides that a violation of the right of any individual under the
 20 ADA shall also constitute a violation of the Unruh Civil Rights Act," and that Defendant's
 21 conduct likewise violated the ADA. (Dkt. No. 1-1 at ¶ 31.) Though Plaintiff
 22 acknowledged a violation of the ADA likewise constitutes a violation of the Unruh Act,
 23 Plaintiff did not allege a cause of action under the ADA, nor seek relief pursuant to the
 24 ADA.

25 On November 26, 2018, Defendant improperly removed this action to the United
 26 States District Court for the Central District of California based on an alleged federal
 27 question pursuant to 28 U.S.C. §§ 1331, 1441.
 28

1 **III. ARGUMENT**

2 **A. Applicable Law**

3 “‘Federal courts are courts of limited jurisdiction,’ possessing ‘only that power
 4 authorized by Constitution and statute.’” *Gunn v. Minton*, 568 U.S. 251, 256 (2013)
 5 (quoting *Kokkonen v. Guardian Life Ins. Co. of America*, 511 U.S. 375, 377 (1994)).
 6 “The burden of establishing jurisdiction falls on the party invoking the removal statute, .
 7 . . which is strictly construed *against* removal.” *Sullivan v. First Affiliated Sec., Inc.*,
 8 813 F.2d 1368, 1371 (9th Cir. 1987) (emphasis added). “The strong presumption against
 9 removal jurisdiction means that . . . the court resolves *all* ambiguity in favor of remand
 10 to state court.” *Hunter v. Philip Morris USA*, 582 F.3d 1039, 1042 (9th Cir. 2009) (internal
 11 quotation marks removed) (emphasis added). The removal statute “is strictly construed
 12 and federal jurisdiction must be rejected if there is *any doubt* as to the right of removal in
 13 the first instance.” *Duncan v. Stuetzle*, 76 F.3d 1480, 1485 (9th Cir. 1996) (emphasis
 14 added).

15 **B. This Action Is Not Properly Removable Under 28 U.S.C. § 1331.**

16 Federal question jurisdiction only exists where “1) federal law creates the cause of
 17 action; 2) under the artful pleading doctrine, the plaintiff’s state law claims should be
 18 recharacterized as federal claims; or 3) one or more of the state law claims necessarily
 19 turns on the construction of a substantial, disputed federal question.” *Rains v. Criterion
 20 Systems, Inc.*, 80 F.3d 339, 343 (9th Cir. 1996). Here, Defendant contends that Plaintiff’s
 21 cause of action is predicated solely upon an alleged failure of Defendant’s website to
 22 comply with a federal statute, the ADA. (Dkt. No. 1 at ¶¶ 3-4).

23 **1. Removal Is Not Proper Where A Federal Issue Is Merely
 24 Collateral To A State Law Claim.**

25 Defendant does not, and indeed cannot, dispute that Plaintiff did not plead any
 26 federal causes of action. Instead, Plaintiff alleged *one* cause of action based on California
 27 law. It is true, as Plaintiff acknowledges in her Complaint, that a violation of the ADA
 28 is necessarily a violation of the Unruh Act. Cal. Civ. Code, § 51(f). However, removal

1 remains “improper where a federal issue raised in a plaintiff’s complaint is *merely*
 2 *collateral* to a state law claim.” *Jackson v. Yoshinoya America Inc.*, no. 12-cv-08518
 3 MMM EX, 2013 WL 865596, at *2 (C.D. Cal. Mar. 7, 2013) (emphasis in original) (citing
 4 A Charles A. Wright, Arthur R. Miller et al., Federal Practice and Procedure § 3722 (4th
 5 ed. 2012)). The federal question must be a necessary *element* of the state law claim before
 6 federal jurisdiction exists. *Id.* at *2 (citing *Merrell Dow Pharmaceuticals Inc. v. Thompson*, 478 U.S. 804, 812 (1986)); *Franchise Tax Board v. Construction Laborers Vacation Trust*, 463 U.S. 1, 13 (1983) (“some substantial, disputed question of federal law [must be] a necessary element of one of the well-pleaded state claims”)).

10 **“Courts have consistently held that the fact that state law incorporates the ADA as an element of a state law cause of action does not confer federal jurisdiction to hear the state claims.”** *Id.* (emphasis added) (referencing *Wander v. Kaus*, 304 F.3d 856, 859 (9th Cir. 2002) (“Federal-question jurisdiction over a state-law claim is not created just because a violation of federal law is an element of the state law claim”); *Pickern v. Best Western Tiber Cove Lodge Marina Resort*, 194 F.Supp.2d 1128, 1131 (E.D. Cal. 2002) (“The fact that an ADA violation may serve as an element of a state law claim does not automatically confer federal question jurisdiction”); *Jairath v. Dyer*, 154 F.3d 1280, 1281 (11th Cir. 1998) (holding that a claim arising under a Georgia state law that incorporated the ADA did not confer federal jurisdiction)).

20 Indeed, the Ninth Circuit has offered binding authority directly on this point. In
 21 *Wander v. Kaus*, *supra*, the Ninth Circuit explicitly held that **“there is no federal-question jurisdiction over a lawsuit for damages brought under [a California statute], even though the California statute makes a violation of the federal Americans with Disabilities Act a violation of state law. Congress intended that there be no federal cause of action for damages for a violation of Title III of the ADA.”** To exercise federal-question jurisdiction in these circumstances would circumvent the intent of Congress. Federal-question jurisdiction is not created merely because a violation of federal law is an element of a state law claim.” 304 F.3d at 857 (emphasis

1 added); *see also Pickern v. Stanton's Restaurant & Woodsman*, No. C 01-2112 SI, 2002
 2 WL 143817 (N.D. Cal. Jan. 29, 2002) (holding that allegations of ADA violations as an
 3 element of a state claim for damages were insufficient to support federal question
 4 jurisdiction).

5 Defendant wholly failed to address the *Wander* decision in its removal papers;
 6 indeed, it did not even reference this binding authority. Similarly, Defendant failed to
 7 address the recent decision in the *Yoshinoya America Inc.* action. In *Yoshinoya America*
 8 *Inc.*, the wheelchair-bound plaintiff alleged two causes of action, one for violation of Title
 9 24 of the California Building Code and the other for violations of California Civil Code
 10 §§ 54, 54.1, and the second for violation of California's Unruh Civil Rights Act based on
 11 the alleged barriers preventing the plaintiff's accessibility upon the defendant's premises,
 12 and sought *both* statutory damages *and injunctive relief* pursuant thereto.

13 There, the defendant attempted to remove the plaintiff's action on the grounds that
 14 plaintiff's case arose under the ADA and that the Plaintiff's request for injunctive relief
 15 made the action removable. The district court granted remand for the same reasons the
 16 Court should remand this action, namely because "Federal-question jurisdiction over a
 17 state-law claim is not created just because a violation of federal law is an element of the
 18 state law claim." *Yoshinoya America Inc.*, *supra*, 2013 WL 865596, at *2 (quoting
 19 *Wander*, *supra*, 304 F.3d at 859). Again, even according to the *Pickern* decision upon
 20 which Defendant almost exclusively relies, "The fact that an ADA violation may serve
 21 as an element of a state law claim does not automatically confer federal question
 22 jurisdiction." *Pickern*, *supra*, 194 F.Supp.2d at 1131.

23 **2. Defendant's Reliance Upon One Decision from the Eastern
 24 District Is Not Persuasive, Nor Is Binding On This Court.**

25 Defendant's almost exclusive reliance upon *Pickern v. Best Western Timber Cove*
 26 *Lodge Marina Resort*, 194 F.Supp.2d 1128 (2002) is misplaced because not only is it
 27 non-binding, but more importantly it did not have the advantage of the binding precedent
 28 issued by the Ninth Circuit in *Wander* a month later. *See Camreta v. Greene*, 563 U.S.

1 692, 709 n.7, 131 S. Ct. 2020 (2011) (“A decision of a federal district court judge is not
 2 binding precedent in either a different judicial district, the same judicial district, or even
 3 upon the same judge in a different case.”).

4 Moreover, Defendant’s Notice of Removal ignores the many more recent decisions
 5 from this district which support the remand of the action which had the benefit of the
 6 binding precedent in *Wander*. *See, e.g., Rios v. Friendly Hills Bank*, No. CV 17-04582
 7 BRO (JPR), 2017 WL 3530348, at *4 (C.D. Cal. Aug. 16, 2017) (“Because the Plaintiff
 8 only asserts a state-law cause of action and seeks only state-law remedies, the Court finds
 9 that the Plaintiff’s claim does not “arise under” federal law.”); *Thurston v. Chino*
 10 *Commercial Bank*, No. CV 17-01078 BRO (JCx), 2017 WL 3224681, at *4 (C.D. Cal.
 11 July 27, 2017) (same); *Rios v. CWGS Enterprises, LLC*, No. CV 17-03614 RSWL-AFMx,
 12 2017 WL 3449052, at *3 (C.D. Cal. Aug. 11, 2017) (“It is clear that Plaintiff did not
 13 directly allege a federal cause of action and federal law does not create the cause of action
 14 in the instant case. Therefore, federal question jurisdiction is not appropriate on this
 15 basis.”); *Cohen v. Ralphs Grocery Co.*, No. CV 13-01728 GAF (JEMx), 2013 WL
 16 1303825, at *2 (C.D. Cal. Mar. 26, 2013) (finding the claim did not “arise under” federal
 17 law where the plaintiff alleged a single cause of action pursuant to a violation of the
 18 Unruh Act, even where the plaintiff alleged a violation of the ADA as a theory for proving
 19 the Unruh Act violation); *Mason v. El Torito*, No. CV 12-07934 GAF (VBKx), slip op.
 20 at 3 [ECF #11] (C.D. Cal. Oct. 15, 2012) (“That Plaintiff mentioned the violation of a
 21 federal statute in his Complaint does not transform this suit into a federal question case.”)
 22 (citing *Carpenter v. Raintree Realty, LLC*, No. CV 11-06798-RGK (MRWx), 2012 WL
 23 2579179, at *2 (C.D. Cal. July 2, 2012) (“The mere fact that the Unruh Act incorporates
 24 violations of the ADA does not give this Court federal question jurisdiction over
 25 Plaintiff’s state law claim.”) (*Thurston v. Container Store, Inc.*, 2017 WL 658806 (C.D.
 26 Cal., Feb. 16, 2017); *Thurston v. Toys R Us, Inc.*, 5:16-cv-02672-JAK-AGR at Dkt. 14,
 27 2-5 (C.D. Cal., February 23, 2017) (RJN Ex. A); *Thurston v. Omni Hotels Management*
 28 *Corporation*, 5:16-cv-02596-TJH-KK at Dkt. 15 (C.D. Cal., May 19, 2017) (RJN Ex. B).

1 Defendant's attempt to focus on the relief sought *pursuant to the Unruh Act* is of
 2 no help. In *Toys R Us, supra*, the Court recognized that Plaintiff alleged essentially two
 3 theories of relief:

4 “A review of these allegations and a construction of the Unruh Act, shows
 5 that the Complaint seeks relief under two separate theories: (i) Defendant
 6 violated Cal. Civ. Code § 51(b), which provides that all persons within the
 7 jurisdiction of California are ‘entitled to the full and equal accommodations,
 8 advantages, facilities, privileges, or services in all business establishments of
 9 every kind whatsoever,’ and (ii) Defendant violated Cal. Civ. Code § 51(f),
 10 which provides that an ADA violation is also a violation of the Unruh Act.
 11 There is no showing or suggestion that the relief Plaintiff has requested is
 12 unavailable under California law. Thus, the present claim is not based *solely*
 13 on the ADA. ‘When a claim can be supported by alternative and independent
 14 theories – one of which is a state law theory and one of which is a federal law
 15 theory – federal question jurisdiction does not attach because federal law is
 16 not a necessary element of the claim.’ *Rains v. Criterion Sys., Inc.*, 80 F.3d
 17 339, 346 (9th Cir. 1996).”

18 *Toys R Us*, 5:16-cv-02672-JAK-AGR, Dkt. 14 at 4 (C.D. Cal., February 23, 2017)
 19 (emphasis in original) (RJN Ex. A).

20 In sum, it is undisputed that Plaintiff's claim arises under the California Civil Code,
 21 the Unruh Civil Rights Act, a state law. The Ninth Circuit has made clear that there is no
 22 federal-question jurisdiction over a lawsuit for damages brought under a California
 23 statute (the Unruh Act) which is also a violation of Title III of the ADA. *Wander v. Kaus,*
 24 *supra*, 304 F.3d at 857. The Ninth Circuit has also made clear that “the court resolves all
 25 ambiguity in favor of remand to the state court.” *Hunter v. Philip Morris USA*, 582 F.3d
 26 1039, 1042 (9th Cir. 2009).

27 Defendant ignores all of this authority. Accordingly, this Court should grant this
 28 Motion and remand this action to the Superior Court for the County of Orange.

1 **C. The Ninth Circuit's Holding In *Weyer* Is Irrelevant.**

2 In its removal papers, with feigned indignance, Defendant accuses Plaintiff of
 3 attempting to convince the court “not to apply Ninth Circuit precedent.” (Dkt. No. 1 at ¶
 4 2). Defendant either critically misunderstands, or misconstrues Plaintiff’s cause of action
 5 in the Superior Court under the Unruh Act. As alleged consistently throughout Plaintiff’s
 6 complaint, Defendant’s website is a business establishment under the Unruh Act, and
 7 based on its denial of full and equal access thereto on the basis of disability, Plaintiff
 8 seeks statutory and injunctive relief under the Unruh Act. (Dkt. No. 1-1 at ¶¶ 9, 20, 28,
 9 29).

10 While it is true that, pursuant to Ninth Circuit precedent in *Weyer v. Twentieth*
 11 *Cent. Fox Film Corp.*, 198 F.3d 1104 (9th Cir. 2000), website-only services unconnected
 12 to, or without a nexus to, a “place of public accommodation” are not actionable under the
 13 ADA, that *was not* the holding with respect to “business establishments” under the Unruh
 14 Act. *Weyer*, 198 F.3d 1104, 1114 (holding that “some connection between the good or
 15 service complained of and an actual physical place is required”); Cal. Civ. Code § 51(b)
 16 (“All persons within the jurisdiction of this state are free and equal, and no matter what
 17 their sex, race, color, religion, ancestry, national origin, disability, medical condition,
 18 genetic information, marital status, sexual orientation, citizenship, primary language, or
 19 immigration status are entitled to the full and equal accommodations, advantages,
 20 facilities, privileges, or services in **all business establishments of every kind**
 21 **whatsoever**”) (emphasis added) (compare to 42 U.S.C. § 12182(a) (“No individual shall
 22 be discriminated against on the basis of disability in the full and equal enjoyment of the
 23 goods, services, facilities, privileges, advantages, or accommodations of any place of
 24 public accommodation by any person who owns, leases (or leases to) or operates a place
 25 of public accommodation.”)).

26 Further, neither the California Supreme Court, nor the appellate courts thereunder,
 27 have adopted *Weyer* or made the same holding demanding a nexus between a service (like
 28 a website) and a physical place of public accommodation under the ADA, much less a

1 holding demanding a nexus under the Unruh Act between a service (like a website) and
 2 a physical business establishment. As such, Plaintiff's allegations against Defendant's
 3 business establishment arising under the Unruh Act in the Superior Court of California
 4 are wholly proper and reasonable.

5 Plaintiff's allegations and relief requests based on the definition of "business
 6 establishment" under Unruh, *without* a nexus to a place of public accommodation as
 7 required under the ADA in Ninth Circuit courts, is supported by case law. Indeed, Courts
 8 have consistently held that the language of the Unruh Act "is broader than that of the
 9 ADA" such that it is not limited to restrictions on access to a place of public
 10 accommodation in the same way as the ADA is limited because the Unruh Act regulates
 11 "**all business establishments of every kind whatsoever.**" Cal. Civ. Code § 51(b)); *Nat'l*
 12 *Fed. of Blind v. Target*, 582 F. Supp. 2d 1185, 1196 (N.D. Cal. 2007) ("the Unruh Act
 13 and the DPA reach Target.com as a kind of business establishment and an
 14 accommodation, advantage, facility, and privilege of a place of public accommodation
 15 respectively. **No nexus to the physical stores need be shown.**") (emphasis added); *Butler*
 16 *v. Adoption Media, LLC*, 486 F. Supp. 2d 1022, 1056 (N.D. Cal. 2007) ("***the***
 17 ***ParentProfiles.com website is plainly a business establishment as defined under***
 18 ***California law.***") (emphasis added) (citing a California Supreme Court case for the
 19 proposition that the California Legislature intended the Unruh Act's definition of
 20 "business establishments" to be interpreted "in the broadest sense reasonably possible").
 21 The California Supreme Court has held that the Unruh Act is to be "construed liberally"
 22 in order to carry out its purpose to eradicate discrimination. *Munson v. Del Taco, Inc.*,
 23 46 Cal.4th 661, 666 (2009) (quoting *Angelucci v. Century Super Club*, 41 Cal. 4th 160,
 24 167 (2007)).

25 Thus, Plaintiff's allegations regarding Defendant's website as a business
 26 establishment under the Unruh Act further supports remand of this case to the Superior
 27 Court.
 28

1 **IV. ATTORNEYS' FEES SHOULD BE AWARDED TO PLAINTIFF**

2 Where removal was improper, the court may award attorneys' fees incurred in
 3 seeking remand to the proper court. 28 U.S.C. § 1447(c) ("An order remanding the case
 4 may require payment of just costs and any actual expenses, including attorney fees,
 5 incurred as a result of the removal.") The Supreme Court held that "the standard for
 6 awarding fees should turn on the reasonableness of the removal." *Martin v. Franklin*
 7 *Capital Corp.*, 546 U.S. 132, 141 (2005). As the Court put it, "[a]bsent unusual
 8 circumstances, courts may award attorney's fees [] where the removing party lacked an
 9 objectively reasonable basis for seeking removal." *Id.*; *Lussier v. Dollar Tree Stores,*
 10 *Inc.*, 518 F.3d 1062, 1065 (9th Cir. 2008).

11 Here Defendant lacked an objectively reasonable basis for removal of this action
 12 most importantly because it wholly, and intentionally, failed to acknowledge binding
 13 Ninth Circuit authority *directly on point* when attempting to base its removal on federal
 14 question jurisdiction. *Wander v. Kaus*, 304 F.3d 856, 857 (9th Cir. 2002) ("there is no
 15 federal-question jurisdiction over a lawsuit for damages brought under [a California
 16 statute], even though the California statute makes a violation of the federal Americans
 17 with Disabilities Act a violation of state law.") (emphasis added). The Court does not
 18 need to find bad faith before awarding such fees and costs, and as such, awarding fees
 19 against Defendant in this instance is wholly reasonable. 28 USC § 1447(c); *Moore v.*
 20 *Permanente Med. Group, Inc.*, 981 F.2d 443, 446 (9th Cir. 1992).

21 **V. CONCLUSION**

22 For the reasons set forth herein, Plaintiff respectfully requests that the Court
 23 remand this action to the Superior Court of California for the County of Orange, award
 24 Plaintiff's attorneys' fees in the amount of \$6,125, and grant such further and other relief
 25 as the Court deems appropriate.

26
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 28

1 Dated: December 19, 2018

PACIFIC TRIAL ATTORNEYS
A Professional Corporation

2 By: /s/ Scott J. Ferrell

3 Scott J. Ferrell

4 Attorney for Plaintiff

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CERTIFICATE OF SERVICE

I hereby certify that on December 19, 2018, I electronically filed the foregoing
NOTICE OF MOTION AND MOTION TO REMAND ACTION TO THE
SUPERIOR COURT OF CALIFORNIA FOR THE COUNTY OF ORANGE;
MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF
with the Clerk of the Court using the CM/ECF system which will send notification of
such filing via electronic mail to all counsel of record.

/s/ Scott J. Ferrell
Scott J. Ferrell